BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

FILED
05-25-07
04:59 PM

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.	Rulemaking 04-04-003 (Filed April 1, 2004)
Order Instituting Rulemaking to Promote Consistency in Methodology and Input Assumptions in Commission Applications of Short-run and Long-run Avoided Costs, Including Pricing for Qualifying Facilities.	Rulemaking 04-04-025 (Filed April 22, 2004)

OPENING COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) ON PROPOSED DECISION OF ALJ HALLIGAN

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May 25, 2007

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Pursuant to Rule 14.3 of this Commission's Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) comments on the proposed decision (PD) dated April 24, 2007.

I. INTRODUCTION

PG&E thanks Administrative Law Judge Halligan for her efforts in distilling the voluminous record of this proceeding into the PD. The PD takes positive steps towards integrating Qualifying Facility (QF) generation into the wholesale energy market through its recognition that wholesale energy prices are the short-run costs the IOUs avoid when purchasing power from a QF.[1/] The PD properly adopts a market-based modification to the current short-run avoided cost (SRAC) formula to determine the IOUs'. The final decision will help integrate QF portfolios into the IOUs' procurement plans by mandating modern contract terms and requiring that QFs comply with the California Independent System Operator's (CAISO) scheduling and communication requirements.

1/ The PD would not affect the more than 120 QF contracts representing "almost 52.04% of generation deliveries from all QFs currently under contract with PG&E." PD p. 4, citing D.06-07-032, pp. 4-5.

As discussed below, while PG&E strongly supports the PD, it requests clarification or revision of several points and requests the PD to be modified to:

- Eliminate the Operations and Maintenance (O&M) adder to the Market Index Formula (MIF) as O&M costs are already reflected in the wholesale market power prices used in calculating the MIF;

- Clarify that the time of delivery (TOD) factors for energy and capacity will be based on the respective energy and capacity TOD factors in PG&E's next long-term procurement plan; and that the SRAC energy TOD factors will not be based on the "all-in" (capacity plus energy) TOD factors of PG&E's most recent Renewable Portfolio Standard (RPS) solicitations;

- Specify that the IOUs' posted as-available capacity prices should be contingent on the IOUs' ability to count such capacity towards their resource adequacy (RA) requirements;

- Revise the firm and as-available capacity prices to better reflect the record evidence;

- Indicate that the prospective QF program will terminate on the effective date of a decision by the Federal Energy Regulatory Commission (FERC) terminating PG&E's mandatory purchase obligation; and

- Limit the availability of new standard contracts to QFs 1 MW or smaller and require other QFs to participate in solicitations or bilateral negotiations or, in the alternative;

- Limit the availability of new standard contracts to existing QFs and QFs with a net capacity of 20 MW or below and reduce the term of the proposed ten-year agreement to less than five years.

These revisions, and other discrete issues discussed below, will assure the QFs are paid no more than the utilities' avoided cost for power purchases.

II. DISCUSSION

A. The Commission Should Adopt The Market Index Formula With Only Minor Clarifications.

The PD would adopt a MIF, which is based on the SRAC formula the Commission adopted for Southern California Edison Company (SCE) in Decision 01-03-067.[2/] The PD's adoption of the MIF complies with the Public Utility Regulatory Policies Act's (PURPA)[3/] requirement that purchase prices not exceed the IOUs' avoided cost for the purchase of incremental energy.[4/] The PD concisely reviews the expert testimony that the IOUs and the QFs presented, including PG&E's testimony regarding its dispatch protocol. It properly concludes that "SRAC energy prices should reflect power prices as reported at the NP15 trading point for PG&E…."[5/] The PD correctly rejects the outdated "QF-in/QF-out" pricing methodology, referencing the Commission's own determination, almost 20 years ago, to reconsider the potential use of that methodology once the industry moved to "a more competitive environment" like that which exists today.[6/]

Finally, the PD correctly concludes that the MIF, based as it is "on the Modified Formula adopted in D.01-03-067," is lawful.[7/] That formula was the subject of judicial review in which the QFs challenged the legality of the formula. The court rejected the QFs' arguments, stating that "to the extent that CCC is arguing that the Commission is forever wedded to the pre-1996 figures and cannot take current prices into account, CCC is in error."[8/] Indeed, as the PD points

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2/ PD pp. 61-62.

3/ *Public Utility Regulatory Policies Act of 1978*, 16 U.S.C. § 824a-3(d).

4/ PD p. 12. As both the FERC and the California courts have recognized, the Commission cannot establish rates of payment to QFs that exceed utility avoided cost. (*See S. Cal. Edison Co. v. P.U.C.* (2002) 101 Cal. App. 4th 982, 998; *S. Cal. Edison Co. v. P.U.C.* (2002) 101 Cal. App. 4th 384, 398-99; *Midwest Power Sys., Inc.* (1997) 78 FERC ¶ 61,067, 61,246-47; *S. Cal. Edison Co.* (1995) 70 FERC ¶ 61,215, 61,677; and *Conn. Light & Power Co.* (1995) 70 FERC ¶ 61,012, 61,029.)

5/ PD p. 136, FOF 14; and see PD pp. 53-57.

6/ PD p. 51, citing D.88-03-079, 27 CPUC 2d 559, 576.

7/ PD p. 61.

8/ 101 Cal. App. 4th 982, 993 (*Edison II*).

out, "Even CCC does not dispute that SCE's proposal can be implemented through the MIF consistent with § 390(b)."[9/]

1. The O&M Adder To The MIF Overpays The QFs.

While the PD correctly notes that the wholesale power prices resulting from transactions at NP-15 and SP-15 "are the energy costs that would otherwise be incurred by the IOUs in the short run to replace QF power,"[10/] it would accept the QFs' proposal to include an O&M variable cost adder, which the PD sets at $2.47/MWh.[11/] The O&M variable cost adder should be removed because it wrongly assumes PG&E's alternative to QF power is the operation of a PG&E-owned marginal generation unit, which the PD correctly notes is no longer accurate. Because PG&E has divested most of its thermal units, its marginal cost is not the cost associated with a thermal unit, but the cost of energy purchased in the competitive wholesale market. Thus, adding a separate O&M variable cost adder to a market-based power price would result in SRAC energy prices that exceed PG&E's avoided energy costs.[12/]

In describing the MIF, the PD states that "the MIF does not deduct an O&M value from the power price in the heat rate calculation…. Thus, the adopted heat rate is an unadjusted market heat rate."[13/] Market prices, however, are "all-in" prices.[14/] Avoided O&M variable costs are embedded in market prices. Under the PD, O&M-related variable costs are effectively double counted.[15/] Accordingly, unless the O&M cost adder is excluded, the PD should be clarified to state that the O&M variable cost value shall be deducted from the power price in the

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9/ PD p. 58.

10/ PD p. 59.

11/ PD p. 92, Table 7. While the PD purports to adopt a MIF for SRAC that is based on a methodology proposed by SCE (PD at 61-62, FOF 17) SCE proposed to subtract the variable O&M to calculate an implicit market heat rate net of variable O&M. See SCE Opening Testimony, Ex. 1, pp. 62-64.

12/ PG&E Ex. 29, pp. 3-21 to 3-22.

13/ PD, Table 4 Notes (emphasis added).

14/ SCE Ex. 2, p. 69, fn. 71.

15/ TURN Ex. 150, p. 4.

MIF heat rate calculation to make the PD consistent with its intent to derive a market-based SRAC.

2. PG&E's SRAC Should Be Based on a 50/50 weighting of published border prices at Malin and Topock.

In its discussion of the appropriate gas prices for use in the SRAC formula, the PD refers to Decision 01-03-067 in which, among other things, the Commission found that "the Topock border index no longer represents a robust market."[16/] The Commission therefore adopted a Malin border price "as a temporary replacement for Topock…."[17/]

The PD concludes that "the Topock border point is now sufficiently robust and should be utilized in lieu of the Malin border point."[18/] Although this statement could be read to require PG&E to use a Topock border price exclusively, it does not appear this was the intent. Instead, the PD appears to return PG&E to the status quo *ante* Decision 01-03-067, when SRAC for PG&E was "based on a 50/50 weighting of published border prices at Malin and Topock."[19/] The PD should be clarified on this point.

3. The PD Should Be Modified To Allow Monthly Updates Of Intrastate Transportation Rates For Natural Gas.

The PD adopts a burnertip gas price for use in calculating SRAC. The PD would allow "the [] utilities to annually update the intrastate transportation rate to the most recent value in their gas tariffs, as necessary."[20/] As gas transportation tariffs change more frequently and changes may occur in the middle of a SRAC pricing month. The PD should be modified to require the IOUs to update the intrastate transportation rate on a monthly basis, using the tariffed transportation rates in effect on the first day of the calendar month.

16/ D.01-03-067, mimeo at pp. 18-19.

17/ *Id.* at p. 21.

18/ PD p. 65.

19/ D.01-03-067, mimeo p. 14 (footnote omitted).

20/ PD p. 66

4. The Discussion Of TOU/TOD Factors Should Be Clarified.

The PD notes that SRAC energy prices are time differentiated to reflect the differences between the market value of power at different times by means of Time-of-Use (TOU) or Time-of-Delivery factors.[21/] The PD then requires "the IOUs to include the TOU/TOD factors and periods utilized as part of their most recent RFOs."[22/] It appears that by the word "include," the PD intends the factors to be revised when the IOUs "file their next long-term procurement plans for approval" rather than immediately.[23/] This conclusion logically follows from the PD's finding that "the parties recommending specific changes to the TOU/TOD factors and periods did not provide a sufficient showing to support their recommendations."[24/]

PG&E will address this issue when it proposes updated TOU/TOD factors in the next long-term plan, but notes that the TOU/TOD factors used in its RPS RFOs reflect the value of both energy *and* capacity.[25/] PG&E's RPS TOD factors are "all-in" energy and capacity factors because RPS contracts call for a single "all-in" unit price. In contrast, SRAC energy TOU factors are used only to determine QF energy payments. Many QFs also receive a separate capacity payment that are heavily weighted toward payment during the summer peak hours under PG&E's current capacity allocation factors. When combined, the QF energy and capacity TOU allocation factors are even "peakier" than the "energy plus capacity" RPS TOD factors.

It would mix apples and oranges to apply RPS TOU/TOD factors to an energy-only SRAC price and could result in payments that exceed the utilities' avoided costs. In addition, the definitions of the time periods covered by RPS TOD factors are different from the time periods covered by the QF TOU/TOD factors**.**

The PD should be clarified to state that the TOD/TOU factors for energy and capacity must be separately considered and, at a minimum, to state that the SRAC energy factors will not

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21/ *Ibid.*

22/ PD p. 68.

23/ *Id.*

24/ *Ibid.*

25/ PG&E does not use TOD factors in its RFOs for non-renewable generation.

be based on TOU factors from RFOs with "all in" energy and capacity pricing, such as PG&E's RPS solicitations.

B. The As-Available Capacity Discussion Should be Revised.

The PD's discussion of the IOUs' obligations to pay for as-available capacity under existing standard offer agreements should be clarified to state that the new price applies only as long as such capacity counts towards the IOUs' RA requirements.[26/] The PD acknowledges that the ability to count as-available capacity towards RA requirements may change[27/] but creates an ambiguity regarding whether the IOUs will continue to pay for as-available capacity if it no longer "counts" toward fulfilling RA requirements. In the IEP-PG&E settlement, the QFs agreed that PG&E would not be required to pay for as-available capacity unless it counts towards PG&E's RA requirements.[28/] It should also be made clear that the QFs cannot sell any RA from these units as that would result in double counting of RA.

The PD (Table 1) notes that for the existing QF program: "If as-available capacity counts for purposes of RA, QFs will receive a capacity payment." PG&E agrees because there is no avoided cost for as-available capacity unless its purchase fulfills RA requirements. The final decision should state that if the RA counting rules do not allow the IOUs to count as-available capacity, the price of the as-available capacity shall be set to zero. In the alternative, the PD should include a Conclusion of Law providing that as-available capacity under the standard agreements should continue to count toward the IOUs' RA requirements and the QFs can not sell RA for the capacity PG&E is purchasing.

26/ PG&E also notes that the PD, citing the QFs' testimony, incorrectly states that QFs operating under existing standard offer agreements must sell their excess capacity to the utilities and, unlike other generators, may not sell it to other buyers. (PD p. 81.) PG&E's standard offer agreements have a "net" or "surplus sales" option. QFs electing the "surplus sales" option can and do sell their power to third-party buyers, with the excess power sold to the utility.

27/ PD p. 86; see also p. 137, FOF 24.

28/ *Opinion Adopting Settlement Agreement Between Pacific Gas and Electric Company and The Independent Energy Producers Association Regarding Qualifying Facilities*, D.06-07-032, p. 6.

C. The Prospective QF Program Should Be Revised.

1. The Commission Should Not Require The IOUs To Enter Standard Contracts With QFs Larger Than 1 MW.

The PD's "Prospective QF Program," orders the IOUs to offer new QFs and QFs whose contracts expire a "one- to five-year as-available power contract" and a "one- to ten-year, unit-contingent power contract."[29/] The PD acknowledges that PURPA does not require the IOUs to enter into long-term contracts.[30/] Nevertheless, the PD requires the IOUs to enter into new agreements with QFs unless the new contracts would create an oversubscription problem.[31/]

The Commission should require QFs larger than one megawatt[32/] to participate in RFOs or bilateral negotiations to integrate the QF industry into the competitive market structure and to ensure that the IOUs pay no more than their avoided cost for QF power.[33/] A utility has "no obligation under PURPA to purchase power offered at a higher price than the lowest bid" in a competitive all-source solicitation.[34/] However appropriate "standard offer" type contracts may have been 25 years ago when the QF industry was new, they are not needed in today's market, as is evidenced by the number of QFs that agreed to be bound by the settlement the Commission approved in Decision 06-07-032.[35/] The Commission has previously acknowledged that PURPA

29/ PD p. 85.

30/ PD p. 140, COL 12.

31/ *Id.* at COL 14.

32/ PG&E's RFOs do not allow participation by generators with a net capacity below one MW. For these QFs, PG&E recognizes that a standard agreement may be reasonable.

33/ PG&E Ex. 28, pp. 4-6 to 4-10.

34/ *North Little Rock Cogeneration, L.P. v. Entergy Serv. Inc.* (1995) 72 FERC ¶ 61,263, at p. 62,173. The new contracts would not be available to those QFs who entered into a settlement of this proceeding with PG&E. *Opinion Adopting Settlement Agreement Between Pacific Gas and Electric Company and The Independent Energy Producers Association Regarding Qualifying Facilities*, D.06-07-032, mimeo p. 7.

35/ PG&E acknowledges that the PD's proposed contracts are not standard offer contracts like those adopted in the 1980s because they are not open-ended offers. The PD contemplates that QFs may seek such contracts

does not require long-term contracts or any other specific delivery vehicle.[36/] Further "the continued availability of standard offers is not a right to which PURPA entitles QFs."[37/] Even the QFs acknowledge that long-term contracts are not required by PURPA.[38/]

Utilities should not be required to enter into new long-term standard contracts as it is fundamentally inconsistent with utility resource needs, new and changing market conditions, and the implementation of PURPA within a changing market. Given uncertainties related to the potential reinstatement of direct access, growing interest in community choice aggregation, and the Energy Action Plan's emphasis on customer energy efficiency and demand response as preferred resources, utilities should not be obligated to offer long-term contracts with expiring QFs unless they are awarded as part of a competitive solicitation to fill a specific resource need. Requiring new long-term contracts with administratively determined prices, and exclusion of credit support for performance requirements, is inconsistent with the requirements imposed on other market participants, *including new renewable contracts*. If adopted the IOUs may have surplus QF power they must resell at a loss. Requiring new long-term contracts is fundamentally inconsistent with the FERC's implementation of the Energy Policy Act of 2005 and with PURPA's requirement that QF power costs be just and reasonable.[39/] Further, existing QFs do not need 10 year agreements for capital cost recovery purposes.

The new contracts, with administratively-set capacity prices, will dissuade QFs from

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only to the extent such a contract would be consistent with the IOU's need determination resulting from its long-term procurement plan proceeding. (PD p. 118.)

36/ D.05-09-022, mimeo pp. 3-4.

37/ D.96-10-036, mimeo p. 24.

38/ Tr. Vol. 27; 3993-20 to 3993:27, CAC/EPUC/Ross.

39/ *Public Utility Regulatory Policies Act of 1978*, 16 U.S.C. § 824a-3(d) sec. 210(b).

participating in IOU solicitations.[40/] The long-term standard contract price will act as a floor on the price the QF would be willing to bid into a RFO and will perpetuate the separate and unequal treatment for QFs.

The requirement to offer contracts with terms of up to 10 years should be eliminated. The IOUs should only be required to enter into long-term contracts if they meet specific customer needs, planning and operating reserve requirements, are cost-effective or competitively priced for the products provided, including credit provisions, and are consistent with least-cost dispatch principles. PG&E should be able to determine the appropriate term of the contract, given its load requirements and portfolio mix.

Should the Commission nevertheless decide to require standard contracts for QFs exceeding 1 MW, the term should be less than 5 years. The Commission should also modify the prospective QF program as discussed below.

2. The Commission Should Revise The Analysis Of The Capacity Prices.

The PD bases its proposed as-available capacity price on TURN's estimate of the annual real economic carrying charge for the total annual fixed costs of a new combustion turbine (CT), and adjusts this price down to account for the value of ancillary services (A/S).[41/] For the firm, unit contingent capacity price, the PD adopts an amount equal to the fixed nominal annual payment necessary to pay off a loan (at an 8.5% simple annual interest rate) that is equal to the installed capital cost of the market price referent (MPR) proxy plant adopted in Resolution E-4049,[42/] rather than to the capacity costs of that MPR Combined Cycle Gas Turbine (CCGT) as the PD states. The MPR installed capacity cost is based on a new CCGT proxy.[43/] The PD

40/ PG&E Ex. 29, pp. 4-27 to 4-31.

41/ PD p. 85.

42/ *Id.*

43/ MPR Resolution E-4049 (Dec. 2006), p. 3.

would not deduct from that amount the expected revenue from using that plant to provide, nor the expected gross margins from selling energy generated by that plant

Both a CCGT and a CT provide net energy benefits to customers, which the PD does not reflect in the proposed prices for as-available capacity or for firm capacity. The net energy benefits are the gross margins (i.e., revenue less variable costs) that are achieved by dispatching that plant whenever the wholesale market price of energy exceeds the variable costs that plant would incur in generating that energy.[44/] The annual price for as-available capacity should be the annual real economic carrying charge for the net capacity costs of a new CT, which is derived by subtracting the expected net energy benefits the CT would realize from the total fixed costs of that CT. The annual price for firm capacity should be the annual real economic carrying charge for the annual net capacity costs of a new CCGT, which are derived by subtracting the expected net energy benefits from that CCGT from the total fixed costs of that CCGT.[45/]

The Commission should reduce the firm, unit-contingent capacity price for methodological consistency with the PD's approach to pricing as-available capacity to recognize the value of A/S revenues and the use of a real economic carrying charge for the net capacity costs of the CCGT MPR.[46/]

3. As-Available Capacity Under The New One to Five Year Contracts Should Count Towards PG&E's RA Requirements.

The discussion of as-available capacity under the "prospective QF program" should also be modified. Conclusion of Law 6 states that capacity payments should only be made for "unit-contingent power products that are either dispatchable, or that are significantly firmer than the non-unit contingent, Liquidated Damages (LD) contracts (i) bought and sold at NP15/SP15 and/or (ii) scheduled for phase-out for RA purposes, per D.06-10-035."[47/] Conclusion of Law 7

44/ Tr. Vol. 27; 3909:24 to 3910:5, CCC/Beach.

45/ PG&E Ex. 28, pp. 3-38 to 3-39; PG&E Ex. 29, p. 3-31.

46/ The Commission should delete the reference to the "simple interest annual payment for capacity on page 93 of the PD as it is incorrect and not included in the record in the proceeding.

47/ The PD's reference to D.06-10-035 is a typographical error. The correct decision number is D.04-10-035.

states that the new firm capacity contract should count toward RA requirements. There is no Conclusion of Law specifically stating that the as-available capacity should count towards RA requirements. The PD states, however, that the IOUs' requirement to pay as-available capacity payments under the "prospective QF program" will no longer be contingent . . . on the RA counting rules."[48/] To be consistent with the RA value the Commission currently gives existing QF contracts, the PD should be modified to state that the as-available capacity under the new as-available agreements will continue to count towards the IOUs' RA requirements. In the alternative, the final decision should state that the price of as-available capacity shall be reduced to zero for amounts IOUs are not allowed to count towards their RA requirements.[49/]

4. If New Contracts Are Required, Availability Should Be Limited to Existing QFs and New QFs Sized 20 MW or Smaller.

If the Commission decides to order new standard contracts, it should limit their availability to current QFs and QFs with a net capacity no greater than 20 MW to decrease the risk of oversubscription disputes and allow the IOUs reasonably to plan their portfolios.[50/] The PD properly recognizes that under PURPA, the IOUs may not be required to purchase more QF power than needed to meet their resource needs.[51/] The IOUs should not be required to displace existing capacity it can obtain through competitive solicitations with new QF capacity. For example, the Los Medanos Energy Center, which was constructed as a *merchant* plant to sell to the California Power Exchange, self-certified with FERC last year as a 550 MW qualifying cogeneration facility.[52/] If PG&E were required to contract with large merchant facilities selling

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48/ PD p. 87; see also p. 117.

49/ PG&E Ex. 28, pp. 3-39 to 3-40. Because there are no avoided costs for an unneeded capacity, the IOUs cannot be required to pay for as-available capacity that does not count towards RA requirements because such an order would run afoul of the requirement that the purchase rate not exceed the IOUs' avoided costs. *Re So. Cal. Edison Co.* (1995) 70 FERC ¶ 61,215.

50/ PG&E's long-term resource plan assumes that 90% of the QFs now under contract will continue to contract with PG&E.

51/ PD p. 121; *City of Ketchikan, Alaska, et al.* (2001) 94 FERC ¶ 61,293, reh'g denied, 95 FERC ¶ 61,194 (2001); *Connecticut Light and Power Company* (1995) 70 FERC ¶ 61,012, reconsideration denied, (1995) 71 FERC ¶ 61,035, appeal dismissed, *Niagara Mohawk Power Corporation v. FERC* (D.C. Cir. 1997) 117 F.3d 1485.

52/ *January 31, 2006 Notice of Self-Recertification as a Qualifying Cogeneration Facility: Los Medanos*

minimal amounts of steam to qualify as a QF, it may soon find itself oversubscribed with QF power, and unable to extend new contracts to many, much smaller existing QFs.

In the recently-adopted PURPA regulations, FERC created "a rebuttable presumption that the requirement that an electric utility enter into new contracts or obligations to purchase from a QF remains in effect, in all markets, for QFs sized 20 MW net capacity or smaller."[53/] Accordingly, the FERC waiver of the IOUs' must-take obligation may not apply to QFs 20 MW or smaller. If the Commission orders long-term standard contracts at all, it should revise the PD to limit the availability of new QF contracts to existing QFs, or small QFs because, as FERC has determined, QFs 20 MW or larger have greater access to the wholesale power markets and should be on a level playing field with other new market entrants. The final decision should state that QFs with a net capacity exceeding 20 MW that do not currently have a power purchase agreement with the IOUs must participate in the IOUs' solicitations or in bilateral negotiations to obtain new power purchase agreements, which, as the PD acknowledges, complies with PURPA's must-take requirement.[54/]

5. Firm Capacity QFs Should Continue Under Firm Capacity Contracts.

To increase the reliability of the utilities' QF portfolios, the PD should be revised so that QFs who originally operated under firm capacity contracts and are able to provide firm capacity only be allowed to sign the proposed firm capacity contract. There should not be any requirement to pay for firm capacity if the utility cannot depend on the products. The intent is for IOUs to sign contracts for firm products to meet planning, resource adequacy and operating reserve requirements and to comply with CAISO tariffs in a manner that best fits its portfolio in the most cost-effective manner. Thus the QFs who originally signed firm capacity standard offer agreements and are capable of operating under the requirements of firm capacity contracts

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Energy Center, LLC, Docket No. QF01-14; at http://legalease.net/uploads/ferris/7/3/10941373.pdf.

53/ *New PURPA Section 210 (m) Regulations Applicable To Small Power Production and Cogeneration Facilities,* (2006) 117 FERC ¶ 61,078, par. 72 (footnotes omitted).

54/ PD p. 120.

should be required to sign a firm contract, *as long as* the firm contract contains acceptable payment terms for energy and capacity that are common in typical wholesale contracts. [55/]

6. The Standard Contract For Small QFs Less Than 1 MW Should Be Available Only To Small Cogenerators.

The PD states that "for Small QFs with one MW or less in dependable capacity we will approve a five-year as-available standard offer contract."[56/] Use of the underscored indefinite article suggests that the PD is not referring to "the" as-available contract discussed earlier. If this is correct, PG&E would propose a contract similar to that approved for a small cogenerator in *Opinion Granting Application,* D.07-03-042.

The PD's proposed small QF contract should be limited to cogenerators. In R.06-05-027, PG&E offered to make the proposed small generator contract for public water and waste water facilities it submitted (as required by statute) available to other small renewable facilities on terms and conditions similar to those in its proposed contract.[57/] Because the Commission is focusing on the less than 1 MW renewable QFs in R.06-05-027, the Commission should focus here on small non-renewable QFs.

7. The Prospective QF Program Must Terminate Once FERC Terminates PG&E's Mandatory Purchase Obligation.

The PD should be revised to terminate the prospective QF program when FERC terminates PG&E's mandatory purchase requirement. The Commission's authority to regulate wholesale power transactions with QFs is derived wholly from PURPA.[58/] As the PD acknowledges, the Energy Policy Act of 2005 revised PURPA by requiring FERC to revise its regulations to allow IOUs to petition FERC for a determination that the mandatory purchase

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55/ Some cogenerators who formerly operated under firm capacity standard offer agreements are now operating under SO1 agreements, due to the contract extensions previously ordered by the Commission in D.03-12-062 and D.04-01-050.

56/ PD p. 124 (emphasis added).

57/ See "Proposal of Pacific Gas and Electric Company (U39E) to Implement Public Utilities Code § 399.20 (Assembly Bill 1969)," filed in R.06-05-027 and dated April 11, 2007.

58/ 16 U.S.C. § 824; *Indep. Energy Producers Ass'n, Inc.* (9th Cir. 1994) 36 F.3d 848.

obligation no longer applies where designated criteria indicating nondiscriminatory access to a competitive energy market exist.[59/] PG&E agrees with the CAISO that FERC will find the California markets meet the new criteria established in the Energy Policy Act of 2005 when the CAISO's day-ahead market is functioning, now estimated to be January 2008.[60/] FERC recently terminated the mandatory purchase requirement of electric utilities with service areas in the markets administered by the Midwest Independent Transmission System Operator for QFs larger than 20 MW net capacity due to the QFs "nondiscriminatory access to independently administered, auction-based day ahead and real time wholesale markets and to wholesale markets for long-term sales of capacity and electric energy."[61/]

The PD should be revised to state that the new contract options under the prospective QF program shall terminate on the effective date of a FERC order terminating PG&E's obligation to enter into new power purchase agreements with QFs.

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59/ PD pp. 18-20.

60/ CAISO Opening Br., pp. 8-10. FERC also is authorized to grant a utility a waiver in advance of the CAISO day-ahead market, as an independently-administered day-ahead market is not required to meet the requirement for a PURPA waiver. *Energy Policy Act of 2005*, Sections 210 (m)(1)(B) and (C).

61/ *Order Granting Application To Terminate Purchase Obligation And Denying Late Intervention* (2007) 119 FERC ¶ 61,146, par. 10.

III. CONCLUSION.

For the reasons stated above, PG&E requests the Commission to adopt the Proposed Decision of Administrative Law Judge Halligan, with the clarifications and revisions suggested herein.

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May 25, 2007

APPENDIX

Pursuant to Rule 14.3, PG&E provides the following proposed changes to the Proposed Decision's Findings of Fact and Conclusions of Law.

Revisions to Findings of Fact:

19. ~~There is no compelling reason not to adopt the same variable O&M adder for all three utilities~~.

Revisions to the Conclusions of Law:

6. Separate capacity payments should generally only be made for unit-contingent power products that are either dispatchable or that are significantly firmer than the non-unit contingent, Liquidated Damages (LD) contracts (i) bought and sold at NP15/SP15, and~~/or~~ (ii) scheduled for phase-out for Resource Adequacy (RA) purposes, per D.0~~6~~4-10-035. Separate capacity payments should not be made for as-available capacity under existing standard offer agreements or new QF agreements unless such capacity counts towards the IOUs' RA requirements.

11. IOUs should modify their monthly SRAC energy prices using the MIF adopted in this order. IOUs should modify their posted as-available capacity prices consistent with this order.

15. The prospective QF Program contract options should be extended to QFs with existing standard offer contracts, including those that are, or were, on contract extensions set forth in D.02-08-071, D.03-12-062, D.04-01-050, and D.05-12-009. The prospective QF Program contract options are available to QFs who have not operated under standard offer agreements only if the QFs' net capacity does not exceed 20 MW. QFs with a net capacity exceeding 20 MW shall participate in the IOUs' solicitations or bilateral negotiations to obtain new agreements.

32. It is reasonable to reduce the ancillary services value proposed by SDG&E to $10.15 kW-year.

New Conclusions of Law:

The Topoc border point is now sufficiently robust to use a simple average of the California/Arizona (Topock) indices and a simple average of the Northern California indices at Malin, Oregon for purposes of calculating PG&E's Modified Index Formula.

TOU/TOD factors for energy and capacity shall be separately stated for energy and capacity, and shall not be based on the TOD/TOU factors used in RFOs with "all in" pricing.

The Small QF Contract option shall be made available only to small cogeneration facilities; we will pursue a similar contract option for small renewable facilities in R.06-05-027.

The IOUs shall be required to pay for as-available capacity only if the utilities are permitted to count such capacity towards fulfilling their Resource Adequacy requirements.

The prospective QF Program contract options shall terminate upon the effective date of a Federal Energy Regulatory Commission order terminating the IOUs' mandatory purchase obligations under PURPA for the size of facility specified in FERC's order.

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL OR U.S. MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, CA 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On the 25th day of May 2007, I served a true copy of:

OPENING COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) ON PROPOSED DECISION OF ALJ HALLIGAN

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service lists for R.04-04-003 and R.04-04-025 with an e-mail address.

[XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service lists for R.04-04-003 and R.04-04-025 without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 25th day of May, 2007 at San Francisco, California.

/s/

MARTIE L. WAY

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
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Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning	Rulemaking 04-04-003 (Filed April 1, 2004)
Order Instituting Rulemaking to Promote Consistency in Methodology and Input Assumptions in Commission Applications of Short-Run And Long-Run Avoided Costs, Including Pricing for Qualifying Facilities.	Rulemaking 04-04-025 (Filed April 22, 2004)

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